ROHAIZAT YACOB

v.

SOUTH ENGINEERING CONSTRUCTION

HIGH COURT MALAYA, JOHOR BAHRU
ABDUL MALIK ISHAK J
[CIVIL APPEAL NO: 12-40-1996]
1 NOVEMBER 1996

CIVIL PROCEDURE: *Appeal - Appeal to Judge-in-Chambers - Order 49 r. 6(3) Subordinate Courts Rules 1980 - Appeal record - Proper contents of - Appeal record containing draft judgment and not a sealed judgment of the court appealed against - Whether fatal - Subordinate Courts Rules 1980, O. 29 rr. 10, 11, O. 49 r. 6(3)(d)*

The appellant was dissatisfied with the decision of the learned sessions judge dismissing his application to set aside a judgment in default that the respondent had obtained against him. The appellant, in consequence, filed a notice of appeal to the High Court pursuant to O. 49 r. 6(3)(d) Subordinate Courts Rules 1980 ('the SCR'). The facts showed however that the appellant's appeal record, instead of exhibiting a sealed copy of the decision appealed against, contained only draft judgment thereof. At the hearing of the appeal, the respondent raised a preliminary objection that the appellant, in failing to enclose a draft copy of the decision appealed against, had contravened O. 49 r. 6(3)(d) of the SCR, and the appeal must therefore fail on that ground. It was not in dispute that the draft judgment in question, whilst bearing no seal of the court, had been approved by the solicitors of both parties. In the circumstances, a question arose as to whether the draft judgment in the appeal record herein could be construed as a "decision" within the meaning of r. 6(3)(d) of O. 49 of the SCR.

Held:

[1] A judgment which is in draft and unsigned by the Sessions Court's Registrar lacks that semblance of authority to show that it emanates from a court of law. The "draft judgment" too is unsealed and that greatly hinders its authenticity. The "draft judgment", in consequence, was nothing more than a manifestation of an unfinished work, of something done halfway.

[2] "Decision" in r. 6(3)(d) must mean a sealed document that has undergone the whole process as prescribed by O. 29 of the SCR. In other words, it refers to the judgment that has been approved by the Registrar under O. 29 r. 9(4) and thereafter drawn up and entered in accordance with O. 29 r. 10(1), (2) & (3) and sealed in accordance with r. 11(3) thereof. Doubtless, sealing of the judgment is an important prerequisite.

[Preliminary objection upheld; appeal dismissed.]

Case(s) referred to:
Bukit Melita Sdn Bhd v. Lam Geok Hee & Ors [1997] 4 AMR 3160 ***(cit)***
Gurbachan Singh v. Seagrott & Campbell (No 2) [1962] 28 MLJ 370 ***(cit)***
Re Helsby [1894] 1 QB 742 ***(cit)***
Teoh Soon Kok T/a TSK Supplies Trading v. MBF Finance Berhad [1996] 2 CLJ 130 ***(foll)***

Legislation referred to:
Subordinate Courts Rules 1980, O. 29 rr. 9(1), (2), (4), 10(5), 11(1), (2), (3), (4), O. 49 r. 6(3)(d)

Other source(s) referred to:
Concise Oxford Dictionary Of Current English, Della Thompson, 9th edn
Wharton's Law Lexicon, AS Oppe, 14th edn

For the appellant - Mohd Fairuz Abdullah; M/s Sabaruddin Ali & Co
For the respondent - Noordin Hussin; M/s Tia & Noordin

Reported by Rusnah Abdul Aziz

JUDGMENT

Abdul Malik Ishak J:

The appellant was dissatisfied with the decision of the sessions court in Johor Bahru which dismissed with costs the appellant's application to set aside the judgment in default which the respondent obtained against the appellant. Being aggrieved the appellant filed a notice of appeal to the High Court as reflected at p. 24 of the record of appeal which was duly marked as encl. 5.

At the commencement of the appeal, Mr Noordin bin Hussin, the learned counsel for the respondent, raised a preliminary objection which according to him had been conveyed by way of a notice to Mr Mohd Fairuz bin Abdullah of counsel for the appellant. This was a wise move and should be applauded (*In re Helsby* [1894] 1 QB 742; *Gurbachan Singh v. Seagrott & Campbell (No 2)* [1962] 28 MLJ 370; and *Bukit Melita Sdn Bhd v. Lam Geok Hee & 7 Ors* [1997] 4 AMR 3160).

The preliminary objection raised by Mr Noordin bin Hussin may be stated thus. It was argued that the appellant had failed to comply and abide fully to O. 49, r. 6 (3)(d) of the Subordinate Courts Rules 1980 ("SCR") in that the appeal record in encl. 5 did not contain a copy of the decision as required by the rule. What had been enclosed in the appeal record, so it was submitted, was only a draft judgment and not the decision. That draft judgment had been approved by the solicitors of both parties but not by the registrar of the sessions court, Johor Bahru. Indeed what was submitted by Mr Noordin bin Hussin was true as pp. 21 to 22 of the appeal record in encl. 5 amply supported his submission.

Mr Mohd Fairuz bin Abdullah, the learned counsel for the appellant, gave a feeble reply. He explained his difficulty and then prayed for an adjournment which I take it to mean that it would enable him to formalise and regularise his appeal record in accordance with the SCR.

Order 49 r. 6 (3) of the SCR states as follows:

> (3) Within three weeks after the filing of the notice of appeal, the appellant shall file the record of appeal in the High Court and the record shall contain copies of:
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> (a) the application for the decision;
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> (b) the statement of claim, and where defence has been filed, the statement of defence;
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> (c) all affidavits filed in support of or in opposition to the application; and
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> (d) the decision appealed from;
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> but shall not include the notes of evidence, the grounds of judgment or any memorandum of appeal.

There was only one issue for me to decide and this was whether the draft judgment as seen at pp. 21 to 22 of the appeal record can be construed as a "decision" within the meaning of r. 6(3)(d) of O. 49 of the SCR. The *Britannica World Language*, edn. *Of The Shorter Oxford English Dictionary* defined "decision" as a "judgment especially one formally pronounced in a court of law." The *Concise Oxford Dictionary Of Current English*, 9th edn., edited by Della Thompson defined "decision" to mean "a formal judgment." The *Wharton's Law Lexicon*, 14th edn. by A.S. Oppe defined decision to mean "a judgment." Applying the dictionary meaning, the "draft judgment" can be considered and construed to mean the decision of the court of law formally pronounced thereto. But a judgment which is in draft and unsigned by the registrar of the sessions court, Johor Bahru lacked that semblance of authority

to show that it emanates from a court of law. The "draft judgment" too is unsealed and that greatly hinders its authenticity. Anyone being served with the "draft judgment" as seen at pp. 21 to 22 of the appeal record would at once realise that it has not been perfected and lacked the stamp of authority from the court. It has not been engrossed with the seal of the court. To borrow the words of my brother judge, Mohd Hishamudin Mohd Yunus J in *Teoh Soon Kok T/A TSK Supplies Trading v. MBF Finance Berhad* [1996] 2 CLJ 130, the "draft judgment" was nothing more than "a manifestation of an unfinished work, of something done halfway." In that case his Lordship upheld the same preliminary objection as advanced before me and forthwith dismissed the appeal with costs. At p. 132 of the judgment, his Lordship said:

> In upholding the objection, I had ruled that a draft judgment is not a "decision" for the purpose of rule 6 (3)(d). To my mind, it cannot be the intention of the rule that the appellant may enclose in the appeal record a copy of a document which is a manifestation of an unfinished work, of something done halfway. Order 29 of the Subordinate Court(s) Rules stipulates in detail what has to be done after judgment has been made or given by the court. The final step in the prescribed procedure is the extraction of the sealed judgment by the party desirous of enforcing the judgment. A draft judgment is of no use to any party wishing to enforce the judgment. For, since a draft judgment does not bear the seal of the court, it does not have the force of law. I do not think that the Subordinate Court(s) Rules intend to prescribe a different - and lower standard of requirement for the purpose of preparing appeal records, such that a party who is required to enclose a copy of the judgment for the purpose of preparing an appeal record need not have to enclose a copy of the extracted sealed judgment but need only to enclose a copy of the draft judgment. Indeed, from a strict point of view, a draft judgment is not the judgment of the Court. It is only a draft and "a draft implies that it needs perfection and approval" (*per Haji Mohd. Jemuri bin Sarjan C.J. (Borneo)* [1994] 1 CLJ 328 in *Hasil Bumi Perumahan Bhd & 5 Ors. v. United Malayan Banking Bhd* at page 333). It is a document drafted and approved by the solicitors of the parties and its content is merely what the solicitors believe to be the judgment of the Court. It is yet to be approved by the Registrar, and the Registrar, in vetting and approving the draft will scrutinise it to ensure that in form, it fully complies with the Subordinate Court(s) Rules, in particular, Order 29, and, in substance, it is an accurate statement of the decision of the Court as recorded in the Magistrate's notes of proceeding, and if necessary the Registrar will make the necessary amendments to the draft before approving it.
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> It is, therefore, my view that "decision" in rule 6 (3)(d), in the context of the present case, means a sealed document that has undergone the whole process as prescribed by Order 29. In other words, it refers to the judgment that has been approved by the Registrar under Order 29, rule 9(4) and thereafter drawn up and entered in accordance with Order 29 rule 10 (1), (2) and (3).

I gratefully adopt the views of my brother judge to be the correct exposition of the law. The SCR must be complied with to the fullest. Its adherence would ensure the smooth administration of justice in our courts (*Ong Guan Teck & Ors v. Hijjas* [1982] 1 MLJ 105). It is interesting to note that by virtue of O. 29 r. 4 of the SCR the proper officer must enter in the Cause Book a minute of every judgment or final order given or made by the court (referring to the sessions court). Thus, where the party in whose favour a judgment or order is given or made is represented by a solicitor, a copy of the draft shall be submitted for approval to the solicitor of the other party who shall within 2 days of the receipt thereof, or within such further time as may in any case be allowed by the registrar, return such copy with his signed consent or any required amendments thereto (O. 29 r. 9 (1) of the SCR). And under O. 29 r. 9 (2) of the SCR when the solicitor omits to return the copy of the draft within the time prescribed, the solicitor shall be deemed to have consented to the terms thereof. Here, both solicitors have signed the draft judgment.

Now, sealing of the judgment or order is an important pre-requisite. It must be remembered that in the sessions court every judgment or order shall be settled by the registrar (O. 29 r. 9 (4) of the SCR). An order must, when drawn up, be produced at the registry (meaning the office of the sessions court exercising civil jurisdiction), together with a copy thereof and when passed by the registrar the order, sealed with the seal of the sessions court, shall be returned to the party producing it and the copy shall be lodged in the registry (O. 29 r. 10 (5) of the SCR). It must be appreciated that not less than one clear day after a judgment or order has been filed a duplicate thereof shall be supplied on payment of the prescribed fee out of the registry to any party in the proceedings, a situation envisaged and set out in O. 29 r. 11 (1) of the SCR. The rule makes it convenient in that the duplicate of a judgment or order may be a carbon copy of the original except that if the registrar so directs, the duplicate of every judgment or order of such class as the registrar directs, shall be a photographic copy or a copy produced by type lithography or other similar process (O. 29 r. 11(2) of the SCR). Finally, it must be emphasised that before a duplicate of a judgment or order is issued it must be sealed and there must be noted thereon the number of the judgment, the date of entry and the amount of any stamp on the original (O. 29 r. 11(3) of the SCR). Duplicates do play a part. This can be seen in O. 29 r. 11(4) of the SCR where it is set out that where by any of these rules or any order of the court the original judgment or order is required to be produced or served it shall be sufficient to produce or serve the duplicate.

For these reasons, I upheld the preliminary objection advanced by Mr Noordin bin Hussin and dismissed the appeal with no order as to costs.